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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/816,258	04/01/2004	Richmond Powell	6067P2760	9873
23504	7590	06/09/2006	EXAMINER	
WEISS & MOY PC 4204 NORTH BROWN AVENUE SCOTTSDALE, AZ 85251			NGUYEN, TAM M	
			ART UNIT	PAPER NUMBER
			3764	

DATE MAILED: 06/09/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/816,258	POWELL ET AL.	
	Examiner	Art Unit	
	Tam Nguyen	3764	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.


Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.


JEROME DONNELLY
PRIMARY EXAMINER

Attachment(s)

- | | |
|---|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>4-1-04</u> . | 6) <input type="checkbox"/> Other: ____ |

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. Claims 7 and 14 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. It is not clear what is meant by the phrase "has a length being one of longer and shorter than a length" on lines 6-7 of claim 7 and lines 5-6 of claim 14. Examiner will assume that applicant intended to state that at least one of the tubes is longer than at least one of the other tubes to expedite the prosecution.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 15, 16 and 18 are rejected under 35 U.S.C. 102(b) as being anticipated by Eguiluz (1,777,749).

2. As to claims 15 and 16, Eguiluz discloses an aquatic exercise device comprising first and second flotation devices (1,2), first and second handles (23), a plurality of elbow members (3, 9) and a plurality of tube members (5, 7, 10) dimensioned to coupled to the flotation devices and handles wherein the tube members are adjustable in length and disposed between the flotation devices (see Fig. 1 & Page 1, lines 77-87).

3. As to claim 18, Eguiluz discloses an apparatus and inherently a method for exercise comprising the steps of providing first and second flotation devices, first and

second handles and a plurality of tube members wherein the tube members have different lengths and are coupled to the flotation devices and the handles, and the distance between the handles is adjustable and the distance between the flotation devices is adjustable (see Fig. 2 & Page 1, lines 77-87).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 17 is rejected under 35 U.S.C. 103(a) as being unpatentable over Eguiluz (1,777,749) in view of Chu (5,385,497).

4. As to claim 17, Eguiluz discloses an exercise device as described above (see discussion of claim 15). Eguiluz does not disclose that the tube members are comprised of polyvinyl chloride. Chu discloses an aquatic exercise device having tubes comprised of polyvinyl chloride (see Figs. 1 & 4a and Col. 6, lines 29-32). At the time of the invention, it would have been obvious to a person of ordinary skill in the art to make the tubes from any of an array of materials including polyvinyl chloride because of its lightweight and durability in an aqueous solution. Note, the selection of a known material based upon its suitability for the intended use is a design consideration within the skill of the art. In re Leshin, 227 F.2d 197, 125 USPQ 416 (CCPA 1960).

Claims 1-3, 8, 19 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Eguiluz (1,777,749) in view of Quint (5,586,961).

5. As to claims 1 and 8, Eguilez discloses an aquatic exercise apparatus comprising a first flotation device (1), a second flotation device (2), a chain of elements (3, 4, 5, 7, 8, 9) for connecting the flotation devices together and first and second gripping tubes (23) wherein the flotation devices have a shape of a propeller (see Figs. 1-3 & 7).

Eguiluz does not disclose that the gripping tubes and the elements are made from polyvinyl chloride or that the elements include first, second, third, fourth, fifth, sixth and seventh tubes and first, second, third, fourth, fifth and sixth elbows. Quint discloses a similar aquatic exercise apparatus having gripping tubes (148), and tubes (132) and elbows (140) arranged as substantially claimed (see Figs. 1, 3, 4 & 17). Quint also discloses that the components of the device are made from a variety of materials including polyvinyl chloride (see Col. 4, lines 9+). At the time of the invention, it would have been obvious to a person of ordinary skill in the art to 1) make Eguiluz's exercise apparatus from multiple tubes and elbows such that the apparatus can be easily assembled and disassembled for ease in use and transport and 2) make the components from any of an array of materials including polyvinyl chloride because of its lightweight and durability in an aqueous solution.

6. As to claim 2, Equiluz and Quint disclose a modified exercise apparatus as described above. Eguiluz further discloses that the flotation devices have apertures (11) as substantially claimed (see Fig. 3).

7. As to claim 3, Eguiluz and Quint disclose a modified exercise apparatus as described above (see discussion of claim 1). Eguiluz does not disclose that the flotation devices have round pegs for engaging the polyvinyl tubes; however, at the time of the

invention, it would have been obvious to a person of ordinary skill in the art to use any of an array of engaging means including pegs that fit into the tubes for securely coupling the flotation devices to the tubes since the use of pegs is functionally equivalent to the tubes being inserted into the flotation devices.

8. As to claims 19 and 20, Eguiluz discloses an apparatus and inherently a method as described above (see discussion of claim 18). Eguiluz discloses the use tubes and 45-degree bend elbows but no elbows of other degree bends or tubes made from polyvinyl chloride. Quint discloses an aquatic exercise device that uses polyvinyl tubes and 90-degree bend elbows (140) (see Fig. 3). At the time of the invention, it would have been obvious to a person of ordinary skill in the art to 1) use any of an array of bend-angle elbows to connect the tubes to the flotation devices since a change in the bend angle would allow for the flotation devices to be adjustable toward and away from each other such that different muscles can be the focus of exercise depending on the distance between the flotation devices and 2) use any of an array of materials including Polyvinyl Chloride since that material is well known in the exercise art for its light weight and durability in water.

Claims 1, 4, 5, 7, 9, 11, 12 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Chappedelaine (2,416,471) in view of Quint (5,586,961).

9. As to claims 1, 4, 5, 9, 11 and 12, Chappedelaine discloses an exercise apparatus comprising first and second flotation devices (10,11), an axle element for connecting the flotation devices together and first and second gripping tubes (2,3) (see Figs. 2 & 7). Chappedelaine does not disclose that the gripping tubes and the elements

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are made from polyvinyl chloride, that axle element includes first, second, third, fourth, fifth, sixth and seventh equal length and diameter tubes and first, second, third, fourth, fifth and sixth 90 degree bend elbows. Quint discloses a similar aquatic exercise apparatus having gripping tubes (148), and tubes (132) and elbows (140) arranged as substantially claimed (see Figs. 1, 3, 4 & 17). Quint also discloses that the components of the device are made from a variety of materials including polyvinyl chloride (see Col. 4, lines 9+). At the time of the invention, it would have been obvious to a person of ordinary skill in the art to 1) make Chappedelaine's exercise apparatus from multiple tubes of equal length and diameter and elbows having 90 degree bends such that the apparatus can be easily assembled and disassembled for ease in use and transport and 2) make the components from any of an array of materials including polyvinyl chloride because of it's lightweight and durability in an aqueous solution. Note, the selection of a known material based upon its suitability for the intended use is a design consideration within the skill of the art. In re Leshin, 227 F.2d 197, 125 USPQ 416 (CCPA 1960).

10. As to claim 7 and 14, Chappedelaine and Quint disclose a modified exercise device as described above (see discussion of claim 1). Chappedelaine and Quint further disclose that one of the tubes (T) is longer than the other tubes (for example, tube 5) (see Fig. 1 below).

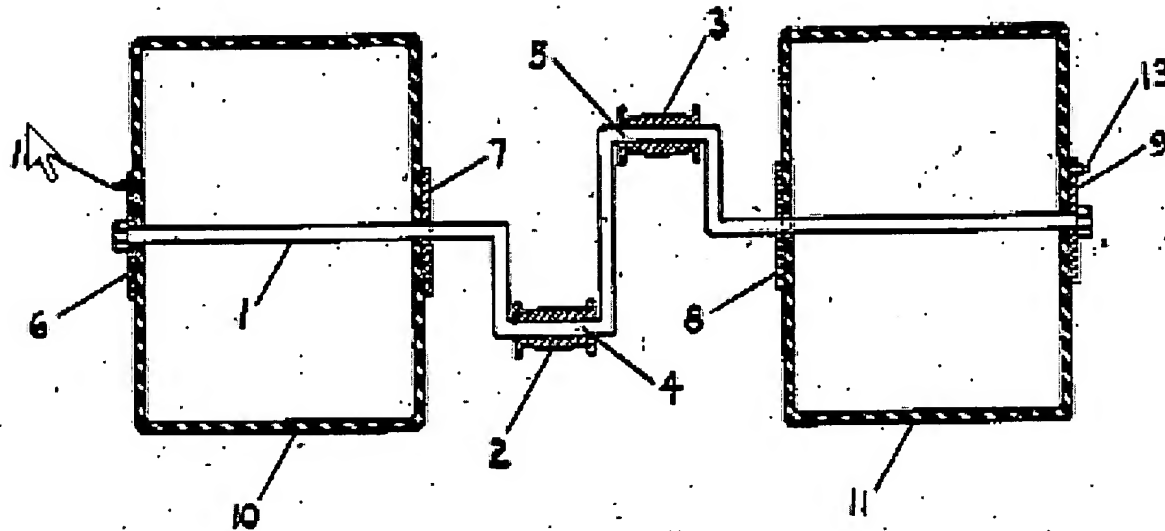


FIG. 1

Claims 6 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Chappedelaine (2,416,471) in view of Quint (5,586,961) and in further view of Eguluz (1,777,749).

11. As to claims 6 and 13, Chappedelaine and Quint disclose a modified exercise device as described above (see discussion of claims 1, 4, 5, 9, 11 & 12).

Chappedelaine and Quint do not disclose that the elbows have approximately 45-degree bends. Eguluz discloses a similar exercise device that includes elbows having approximately 45-degree bends (see Fig. 1). At the time of the invention, it would have been obvious to a person of ordinary skill in the art to make Chappedelaine and Quint's elbows to have any of an array of bend angles including 45 degrees to provide the user with length adjustability between the gripping tubes for improved user comfort during exercise.

Claims 9 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Eguiluz (1,777,749) in view of Quint (5,586,961).

12. As to claims 9 and 10, Eguilez discloses an aquatic exercise apparatus comprising a first flotation device (1), a second flotation device (2), a chain of elements (3, 4, 5, 7, 8, 9) for connecting the flotation devices together and first and second gripping tubes (23) wherein the flotation devices have a shape of a propeller and a sleeve (11) for receiving the chain of elements/tubes (see Figs. 1-3 & 7). Eguiluz does not disclose that the gripping tubes and the elements are made from polyvinyl chloride or that the elements include first, second, third, fourth and fifth tubes and first, second, third and fourth elbows. Quint discloses a similar aquatic exercise apparatus having gripping tubes (148), and tubes (132) and elbows (140) arranged as substantially claimed (see Figs. 1, 3, 4 & 17). Quint also discloses that the components of the device are made from a variety of materials including polyvinyl chloride (see Col. 4, lines 9+). At the time of the invention, it would have been obvious to a person of ordinary skill in the art to 1) make Eguiluz's exercise apparatus from multiple tubes and elbows such that the apparatus can be easily assembled and disassembled for ease in use and transport and 2) make the components from any of an array of materials including polyvinyl chloride because of it's lightweight and durability in an aqueous solution.

Conclusion

13. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

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Chen '960, Martin et al. '202, Meyrin '124, Duarte '501, Adolph '084, Hall '033 and Boulva '297 each disclose an aquatic exercise device having flotation devices with rotatable axles with handles or pedals attached thereto.

Erickson et al. '649 and Norman '323 each disclose aquatic exercise devices having components made from polyvinyl chloride

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tam Nguyen whose telephone number is 571-272-4979. The examiner can normally be reached on M-F 9-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gregory Huson can be reached on 571-272-4887. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

June 1, 2006



JEROME DONNELLY
PRIMARY EXAMINER